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EXAMINER

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3744

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Please find below and/or attached an Office communication concerning this application or proceeding.

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DETAILED ACTION

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 1 and 3-5 are rejected under 35 U.S.C. 103(a) as being unpatentable over Freeman et al. (U.S. 6,491,517 B2) in view of Riches (U.S. 2002/0150854 A1).

Freeman et al. ('517) disclose:

- a jar (16 – container) having an interior (as seen in Figures 6-8);
- a candle (24 – standard votive-type candle) located within the jar (as seen in Figures 6-8);
- at least two decorative elements (20 – opaque structure) being located adjacent the interior surface and positioned in a predetermined pattern (as seen in Figures 6-8);

However Freeman et al. ('517) do not disclose:

- details related to the opening and cross-sectional area of the candle;
- details related to the decorative elements;
- details related to the type of adhesive used.

Riches teaches of a candle that is comprised of an opening; a first portion, whose cross-sectional is greater than the cross-sectional area of a second portion, and a second

portion that is located between the first portion and the opening (as seen in Figures 1, 2 and 5).

In further regard to Freeman et al. ('517), a user's hand can be seen placing the opaque structures (20) in predetermined positions along the interior wall surface of the container (16) (as seen in Figure 7). It is further disclosed that the structures (20) are made out of a tacky substance, which allows them to self adhere to the container's surface (16) (see col. 3, lines 60-67; col. 4, line 1).

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the existing candle of Freeman et al. ('517) so that the candle would be enclosed within a container that comprises of an opening; a first portion, whose cross-sectional is greater than the cross-sectional area of a second portion, and a second portion that is located between the first portion and the opening, as taught by Riches, for aesthetic purposes.

Claims 6-8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Freeman et al. ('517) in view of Riches and in further view of Freeman et al. (U.S. 6,241,512 B1).

However, Freeman et al. ('517) in view of Riches do not disclose:

- details related to a first and second wax material.

Freeman et al. ('512) teach of a decorative candle display (10) that is comprised of a transparent container (12), which can be made out of glass or other appropriate material; a core candle (14), which is preferably made out of a conventional paraffin wax and is disposed within the container; a chamber (18), which is formed between the core candle and the interior wall surface (20) of the container; a plurality of colored gelatinous structures (22), which are adhered to the display's interior wall surface (20); and a petroleum and paraffin mixture (24), which has a melting point below that of the core candle and gelatinous structures (see col. 3, lines 33-45, lines 61-67). Further

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disclosed is that the mixture surrounds each of the gelatinous structures and is located in between the exterior surface (15) of the candle core and interior wall surface of the container (see col. 4, lines 2-6; Figures 2-5). In addition, the gelatinous structures, which are manufactured from a mineral oil gel, can be seen to cover a portion of the candle's mixture (see col. 3, lines 46-51; Figure 5).

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the existing candle display of Freeman et al. ('517) in view of Riches by creating a wax layer that is enclosed within the apparatus' container and surrounds a core candle, as taught by Freeman et al. ('512), to provide a candle display that can accept a replacement core candle upon the depletion of a previously used core candle.

Claims 10-11, 18 and 21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Freeman et al. ('517) in view of Romanelli (1999).

However, Freeman et al. ('517) do not disclose:

- details related to jar;
- details related to aligning a sleeve over the jar.

Romanelli teaches of the preparation of wax, materials and equipment related to and the making of candles (see pages 4-5). Further disclosed is that the candles can be of different shapes, made out of various molds and decorated in an assortment of manners. Romanelli further discloses that a candle can be decorated through the use of stencil motifs (see pages 120-121), which as seen visually allows a user to align a pre-designed pattern of some sort along the candle's exterior surface and inscribe, via spray paint, a selected pattern.

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In addition, as previously disclosed, Freeman et al. ('517) disclose a user's hand placing opaque structures (20) in predetermined positions along the interior wall surface of the container (16) (as seen in Figure 7).

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the existing candle display of Freeman et al. ('517) by placing a stencil motif along the container's outer surface, as taught by Romanelli, for the purpose of allowing the decorative elements, which are placed along the container's interior surface, to be aligned with the patterns found on the stencil motif.

Claims 12-14, 16 and 19-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Freeman et al. ('517) in view of Romanelli and in further view of Freeman et al. ('512).

However, Freeman et al. ('517) do not disclose a method comprising of:

- details related to filling a jar with a first and second layer of wax;
- details related to decorative elements formed within the wax.

As disclosed earlier, Freeman et al. ('512) teach of a decorative candle display that is comprised of a mixture (24) that surrounds a plurality of gelatinous structures (22) and is located in between the exterior surface (15) of the candle core and interior wall surface (20) of the container (12) (see col. 4, lines 2-6; Figures 2-5). Further disclosed is that the decorative elements (20 – opaque structures) are made out of an opaque combustible wax and transparent combustible gelatinous material (see col. 3, lines 2-5), which intuitively will melt upon reaching its respective melting point.

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the existing candle display of Freeman et al. ('517) in view of Romanelli by creating a wax layer that surrounds a core candle, is enclosed within the display's container and is adjacent to a plurality of decorative wax elements,

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as taught by Freeman et al. ('512), to provide a candle display that can accept a replacement core candle upon the depletion of a previously used core candle.

Regarding claims 14 and 19, it would have been obvious matter of design choice to one of ordinary skill in the art at the time the invention was made to modify the existing candle display of Freeman et al. ('517) in view of Romanelli and in further view of Freeman et al. ('512) by making the candle's first wax layer lighter than its second wax layer for aesthetic purposes.

Claim 17 is rejected under 35 U.S.C. 103(a) as being unpatentable over Freeman et al. ('517) in view of Romanelli and in further view of Riches.

However, Freeman et al. ('517) in view of Romanelli does not disclose:

- details related to a method describing the opening and cross-sectional area of the candle.

As disclosed earlier, Riches teaches of a candle that is comprised of an opening; a first portion, whose cross-sectional is greater than the cross-sectional area of a second portion, and a second portion that is located between the first portion and the opening (as seen in Figures 1, 2 and 5).

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the existing candle of Freeman et al. ('517) so that it would be enclosed within a container that comprises of an opening; a first portion, whose cross-sectional is greater than the cross-sectional area of a second portion, and a second portion that is located between the first portion and the opening, as taught by Riches, for aesthetic purposes.

Response to Arguments

Applicant's arguments filed 3/3/06 have been fully considered but they are not persuasive.

In regard to claim 1, Applicant argues that there is no evidence in Freeman et al. ('517) that the decorative elements have been positioned in a predetermined pattern. This argument is not persuasive because as seen in Figure 7, the opaque structures appear to be placed in ordered rows.

Applicant further argues that Freeman et al. ('517) do not disclose a jar having "an opening and a first portion having a first cross sectional area that is greater than a second cross-sectional area of a second portion, the second portion being located between the first portion and the opening." This argument is persuasive; however, is rejected using the combined prior art of Freeman et al. ('517) in view of Riches.

In regard to claims 2-5, Applicant argues that Riches does not teach or suggest the use of this type of container with the placement of decorative elements in a predetermined pattern adjacent the interior surface of the container. This argument is not persuasive because Riches, which is used as a secondary reference, is only required to provide motivation (i.e. regarding the shape of the jar) in modifying the base reference [i.e. Freeman et al. ('517)] and thus, is not required to teach or disclose the placement of decorative elements along the interior surface of the container.

In regard to claims 6-8, Applicant argues that adding Freeman et al. ('512) to the prior art of Freeman et al. ('517) and Riches does not provide sufficient reasoning to overcome the limitations recited in claim 1. This argument is not persuasive because Freeman et al. ('512) are used only as a modifying reference (i.e. in regard to the candle's two wax layers) and thus is not required to disclose all of the limitations recited in claim 1.

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In regard to claims 10, 11, 18 and 21; Applicant argues that the combined art of Freeman et al. ('517) and Romanelli do not teach the step of sliding a sleeve over a jar. This argument is not persuasive because upon placing a stencil motif around the candle's outer surface, a user would obviously have had to slide the sleeve to its appropriate place along the candle's exterior surface for proper alignment. Furthermore, although Romanelli does not teach of placing the motif along the outer surface of a jar, combining it with the prior art of Freeman et al. ('517), which discloses a candle placed within a jar and has decorative elements aligned along the jar's interior surface, would provide sufficient reasoning to overcome the limitations recited in claim 10.

In regard to claims 12-14, 16 and 19-20; these claims are still rejected based upon the prior art of Freeman et al. ('517), Romanelli and Freeman et al. ('512) as well as the response to the argument regarding claim 10.

In regard to claims 14 and 19, Applicant argues that the inclusion of a first layer of wax that is a darker shade than a second layer of wax is not taught by the cited references. This argument is persuasive; however, is rejected upon the new ground(s) of rejection.

In regard to claim 17, Applicant argues that Riches does not provide the missing element that is stated with respect to claim 10. Again, the Applicant is reminded that a secondary reference is only required to provide motivation in combining prior art and does not need to teach or disclose all of the elements associated with a base reference. Therefore, Riches, which is a secondary reference, is only required to provide the teaching in respect to the claim it is used to reject (i.e. claim 17). Furthermore, claim 17 is still rejected based upon the prior art of Freeman et al. ('517), Romanelli and Riches as well as the response to the argument regarding claim 10.

Allowable Subject Matter

Claims 9 and 15 are allowed. The following is a statement of reasons for the indication of allowable subject matter:

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael J. Early whose telephone number is (571) 272-3681. The examiner can normally be reached on Monday - Friday, 7am - 4:30pm.


If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Cheryl Tyler can be reached on (571) 272-4834. The fax phone number for the organization where this application or proceeding is assigned is (571) 273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

MJE
5/8/06

Michael J. Early
Patent Examiner
Art Unit 3744


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SUPERVISORY PATENT EXAMINER

